

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

REDACTED

In the Matter of the Accusation of)
DONALD R. McMAINS, JR., M.D.,)
Respondent.)

No. D-824

DECISION

The attached Decision (Proposed) of the Hearing Officer is hereby adopted by the Board of Medical Examiners as its Decision in the above-entitled matter.

This Decision shall become effective on the 28th
day of DECEMBER, 1964.

IT IS SO ORDERED this 27th day of NOVEMBER,
1964.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

By

Raymond M. Wallerius
RAYMOND M. WALLERIUS, M.D.
Secretary-Treasurer

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Respondent.)

No. D-824

DECISION
(PROPOSED)

The above-entitled proceeding came on regularly for hearing before Coleman E. Stewart, an assigned Hearing Officer of the Office of Administrative Procedure, on October 22, 1964, at 10:30 a.m., Room 102 Business and Professions Building, 1020 N Street, Sacramento, California.

Milos Terzich, Deputy Attorney General, appeared on behalf of the Board of Medical Examiners.

Respondent appeared personally and by his attorney at law, Donald F. Manfredo.

Oral and documentary evidence was received and phonographically reported, the hearing was closed and the matter submitted. After due consideration the Hearing Officer proposes the following decision:

FINDINGS OF FACT

FIRST CAUSE FOR DISCIPLINARY ACTION

I

Complainant, WALLACE W. THOMPSON, as the Executive Secretary for the Board of Medical Examiners of the State of California, made the accusation herein in such official capacity and not otherwise.

II

On or about the 25th day of July, 1950, respondent, DONALD R. McMAINS, was issued a physician's and surgeon's certificate No. 20 A-1662, authorizing him to practice medicine and surgery in the State of California; at all times mentioned herein, subsequent to said date, respondent was and now is licensed to practice medicine and surgery in the State of California.

III

On or about the following dates, respondent did unlawfully prescribe and supply and did assist or abet his receptionist, Joan McCain, an unlicensed person, in supplying dangerous drugs, as defined by section 4211 of the Business and Professions Code, of the following descriptions, in the following amounts, to the following persons, without a prior examination of said persons or any medical indication for the need thereof, to wit:

<u>Date</u>	<u>Name of Drug</u>	<u>Amount</u>	<u>Name of Person</u>
1-31-64	Benzedrine	21 tablets	Ira D. S.
2- 7-64	Benzedrine	102 tablets	Ira D. S.
2-14-64	Benzedrine	82 tablets	Ira D. S.
	Nembutal	12 tablets	Ira D. S.
2-28-64	Benzedrine	41½ tablets	Ira D. S.
	Nembutal	24 tablets	Ira D. S.
3-11-64	Benzedrine	42 tablets	Olivia V.
3-13-64	Benzedrine	92 tablets	Olivia V.
	Benzedrine	25 tablets	Ira D. S.
4- 3-64	Benzedrine	41 tablets	Dolores H.
	Benzedrine	38 tablets	Ira D. S.
	Nembutal	12 tablets	Ira D. S.

IV

Respondent did assist or abet his receptionist, Joan McCain, an unlicensed person, in violating the provisions of sections 4226, 4227, and 4228 of the Business and Professions Code, by assisting or abetting said Joan McCain in dispensing dangerous and hypnotic drugs to the aforementioned persons and in the aforementioned amounts, in containers which were not properly labeled.

V

On or about the following dates, respondent did unlawfully prescribe and supply dangerous drugs, as defined by section 4211 of the Business and Professions Code, of the following descriptions, in the following amounts, to the following persons, without a prior examination of said persons or any medical indication for the need thereof, to wit:

<u>Date</u>	<u>Name of Drug</u>	<u>Amount</u>	<u>Name of Person</u>
3- 6-64	Benzedrine	21 tablets	Ira D. S [REDACTED]
	Nembutol	12 tablets	Ira D. S [REDACTED]
3-26-64	Nembutol	12 tablets	Olivia V [REDACTED]
4- 7-64	Benzedrine	20 tablets	William D. S [REDACTED]

VI

Respondent dispensed and supplied the drugs set forth in finding numbered V above in containers which were not properly labeled.

SECOND CAUSE FOR DISCIPLINARY ACTION

I

Findings of Fact I and II of the First Cause for Disciplinary Action are hereby incorporated herein by reference thereto with the same force and effect as though restated in full.

II

On or about March 13, 1964, respondent assisted or abetted his receptionist, Joan McCain, an unlicensed person, to dispense to Ira D. S [REDACTED], 20 Codrin (Codeine) tablets, a narcotic, as defined by the provisions of section 11001 of the Health and Safety Code of the State of California, in violation of section 11163 of the Health and Safety Code.

III

On or about March 13, 1964, respondent assisted or abetted his receptionist, Joan McCain, in the violation of section 11225

of the Health and Safety Code of the State of California, by not keeping proper records of the dispensing of such narcotic to said person, as set forth in Paragraph II above.

THIRD CAUSE FOR DISCIPLINARY ACTION

I

Findings of Fact I and II of the First Cause for Disciplinary Action are hereby incorporated herein by reference thereto with the same force and effect as though restated in full.

II

On or about the following dates, respondent did prescribe or supply or sell to the following person, narcotics, as defined by sections 11001 and 11002 of the Health and Safety Code of the State of California, in violation of section 11163 of the Health and Safety Code, in that said Ira D. S[REDACTED] was not under respondent's treatment for a pathology or condition, to wit:

<u>Date</u>	<u>Name of Drug</u>	<u>Amount</u>	<u>Name of Person</u>
2-28-64	Percodan	20 tablets	Ira D. S[REDACTED]
3- 6-64	Codrin (Codeine)	10 tablets	Ira D. S[REDACTED]

III

Respondent did not keep proper records of the dispensing of the narcotics set forth in paragraph II above.

FOURTH CAUSE FOR DISCIPLINARY ACTION

I

Findings of Fact I and II of the First Cause for Disciplinary Action are hereby incorporated herein by reference thereto with the same force and effect as though restated in full.

II

On or about February 14, 1964, respondent did assist or

abet his receptionist, Joan McCain, an unlicensed person, in the violation of sections 11161, 11166, 11166.02, and 11007 of the Health and Safety Code by allowing, consenting and approving of said Joan McCain to write a prescription for a narcotic (Codeine) for the person of Frank L., of 1019 "P" Street, Firebaugh, California, under a prescription blank previously signed by respondent.

* * * * *

EXTENUATION AND MITIGATION

I

Respondent has practiced medicine and surgery in an impoverished area. The residents are in a low income group and encounter difficulty in paying for the services of a physician and surgeon. Respondent has made his services available to these people on the basis of a nominal charge of \$3.00 for an office visit and not making a charge for subsequent visits when the only purpose is a continuation of the medication prescribed. Respondent dispensed benzedrine directly to the patients at the rate of twenty tablets for \$1.00 and did not make a charge for the office visit. In his absence he permitted his receptionist to dispense benzedrine to patients when such use had been approved by respondent. Over a period of time the routine of handling a large number of patients developed a pattern of carelessness on the part of the respondent and his receptionist in dispensing benzedrine without a proper examination and determination of medical need, and without making a proper record of such dispensing.

II

Respondent did not offer an explanation as to the dispensing of twelve tablets of nembutol to Olivia V. by his receptionist on March 26, 1964.

III

Respondent did not offer an explanation as to the dispensing of twelve tablets of nembutol to Ira D. S. by respondent's receptionist on February 14, 1964, the dispensing of twenty-four tablets of nembutol to Ira D. S. by respondent's receptionist on February 28, 1964, the dispensing of twenty Codrin tablets to Ira D. S. by respondent's receptionist on the 13th day of March, 1964, or the dispensing of twelve tablets of nembutol to Ira D. S. by respondent's receptionist on April 3, 1964.

IV

Respondent explains his prescribing percodan for and dispensing Codrin to Ira D. S. upon the assumption that S. desired the medication for headaches.

V

Respondent explains his permitting his receptionist filling in a pre-signed prescription for one Frank L. on February 14, 1964, on the basis of L. being a patient who was being treated for arthritis and with respect to whom a pattern of medication had been established. Respondent's receptionist was aware of this pattern.

VI

Respondent declares that he has discontinued the dispensing of benzedrine for any purpose other than that of assisting in reducing obesity and only after a proper examination and justification of medical need.

VII

Respondent declares that he has discontinued the dispensing of any drug without a proper examination and on a medical determination of the need for the drug.

VIII

Respondent is now making a chart for each patient and is making proper entries upon such charts as to examination, diagnosis, and treatment.

IX

Respondent is now making proper records with respect to narcotics and dangerous and hypnotic drugs.

X

Respondent has discontinued the dispensing of any medication or drug by his receptionist.

XI

Respondent admits that his pattern of practice was not an acceptable one and states that he can and will bring himself into compliance with all the provisions of law regulating the practice of medicine/he is permitted to continue to exercise his license.

* * * * *

DETERMINATION OF ISSUES

I

By reason of the facts set forth in paragraph III of the Findings of Fact of Count I hereof, respondent has been guilty of unprofessional conduct as defined by the provisions of sections 2378, 2391.5, 2392 and 2399.5 of the Business and Professions Code of the State of California.

II

By reason of the facts set forth in paragraph IV of the Findings of Fact of Count I hereof, respondent has been guilty of unprofessional conduct as defined by the provisions of sections

2378 and 2391.5 of the Business and Professions Code of the State of California.

III

By reason of the facts set forth in paragraph V of the Findings of Fact of Count I hereof, respondent has been guilty of unprofessional conduct as defined by the provisions of sections 2391.5 and 2399.5 of the Business and Professions Code of the State of California.

IV

By reason of the facts set forth in paragraph VI of the Findings of Fact of Count I hereof, respondent has been guilty of unprofessional conduct as defined by the provisions of section 2391.5 of the Business and Professions Code of the State of California,

V

By reason of the facts set forth in paragraph II of the Findings of Fact of Count II hereof, respondent has been guilty of unprofessional conduct as defined by the provisions of sections 2378 and 2391.5 of the Business and Professions Code of the State of California.

VI

By reason of the facts set forth in paragraph III of the Findings of Fact of Count II hereof, respondent has been guilty of unprofessional conduct as defined by the provisions of sections 2378 and 2391.5 of the Business and Professions Code of the State of California.

VII

By reason of the facts set forth in paragraph II of the Findings of Fact of Count III hereof, respondent has been guilty

of unprofessional conduct as defined by the provisions of section 2391.5 of the Business and Professions Code of the State of California.

VIII

Respondent has been guilty of unprofessional conduct as defined by the provisions of section 2391.5 of the Business and Professions Code of the State of California in that respondent violated the provisions of section 11225 of the Business and Professions Code of the State of California, by not keeping proper records of the dispensing of narcotics as found in paragraph III of the Findings of Fact of Count III hereof.

IX

By reason of the facts found in paragraph II of the Findings of Fact of Count IV hereof, respondent has been guilty of unprofessional conduct as defined by the provisions of sections 2378 and 2391.5 of the Business and Professions Code of the State of California.

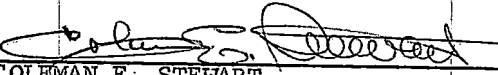
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ORDER

- (1) The license of DONALD R. McMains, JR., to practice as a physician and surgeon in the State of California is hereby revoked.
- (2) The foregoing order of revocation is made separately and severally as to each of the counts found and determined herein.
- (3) This decision shall become effective on the 30th day immediately following service of such decision upon respondent.

I hereby certify that the foregoing constitutes my decision (proposed) in the above-entitled matter as a result of the hearing had before me on October 22, 1964, in Sacramento, California, and I hereby recommend its adoption as the decision of the Board of Medical Examiners of the State of California.

DATED: October 28, 1964.


COLEMAN E. STEWART
Hearing Officer